UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1674
23 September 1998

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD (PARTIAL)* OF THE 1674th MEETING

Held at the Palais des Nations, Geneva
on Tuesday, 14 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

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* No summary record was prepared for the rest of the meeting.

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GE.98-16879 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Ecuador (CCPR/C/84/Add.6; CCPR/C/63/Q/ECU/1) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Ecuador resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation of Ecuador to reply to the questions that the members of the Committee had asked orally after hearing the delegation's replies to the questions in part I of the list of issues (CCPR/C/63/Q/ECU/1).

3. Mr. GALLEGOS CHIRIBOGA (Ecuador), replying to the questions on the status of women and the need to change the way of dealing with the problem of gender specificity, said that, in recent decades, considerable efforts had been made in Ecuador to guarantee that women were present in all sectors of the life of the country. Those efforts had been made by civil society and, in particular, by non-governmental organizations, in cooperation with the State, the Government, university institutions and the private sector so that women might assume an increasingly larger share of responsibility. Ecuadorian women played an active role not only in political and social terms, but also in the education and finance sectors, where they held important decision-making posts. Unfortunately, his delegation could not provide any statistics in that regard. Referring to equal pay for equal work, he said that, at least as far as members of the diplomatic corps were concerned, he could affirm that, if a woman had succeeded him in the post he had held previously, she would have received the same salary as him.

4. Ecuador had taken the trouble of defining the problem of violence against women and had adopted specific measures to prevent, eliminate and curb it. What was involved was not only an educational process designed to publicize the Universal Declaration and the Covenant, but also the need to inform Ecuadorians, in public and in private, of the rights and obligations deriving therefrom so that they would learn and adopt the values in question.

5. As to abortion, he recalled that Ecuadorian lawmakers were meeting the demands of Ecuadorian society, which was primarily Roman Catholic, and that the teachings of the Roman Catholic religion had an influence on the country's legislation. Considerable progress had also been made in terms of sex education and responsible parenthood, mainly as a result of the spread of AIDS-related problems. Far-reaching campaigns had been waged in Ecuador to explain the risks involved in unprotected sexual relations with multiple partners and they had been organized under the auspices of international agencies, with the participation of the Ministry of Public Health and other State bodies.

6. In connection with the question of refugees, he said that Ecuador was a country which had always welcomed refugees and asylum seekers, a matter on which the Ministry of Foreign Affairs was working in cooperation with civil

society and non-governmental organizations, including the Ecuadorian Bishops' Conference, which had a broad programme for issuing documents to refugees covered by the United Nations Office of the High Commissioner for Refugees. In that connection, it should also be noted that, in the Ecuadorian educational system, instruction was given on the human rights provided for in regional and international instruments, as well as on humanitarian law provisions, and that Ecuador was cooperating with the International Committee of the Red Cross to train officials in the aspects of humanitarian law with a bearing on the Geneva protocols, the laws of war and the right of asylum. Major programmes had been set up with UNHCR and had served as models for other Latin American countries. Ecuador had made considerable efforts in the past year to register all the refugees in its territory, who were placed on a list and issued with identity documents.

7. With regard to illegal immigration, it should be noted that Ecuador had very few illegal immigrants from neighbouring countries and that they had a much better status than their Ecuadorian counterparts who had emigrated to other countries. In Ecuador, illegal immigrants had the right to declare their children and register them in any civil registry office. That was a voluntary and individual act by the parents, who thus enabled their children to have Ecuadorian nationality. In many cases, however, immigrants regarded their situation as temporary and wanted to return home. Within its limits, Ecuador had made a great effort to accept a large number of refugees from the region.

8. A question had been asked about what was stated in paragraph 84 of the report (CCPR/C/84/Add.6) on Ecuador's ratification of the Convention on the Prevention and Punishment of the Crime of Genocide; it must be understood that Ecuador had always condemned genocide and the practice of ethnic cleansing, which was going on in Europe at present, especially in the Balkans. Ecuador had never experienced that problem.

9. The Commission for Truth and Justice had been established on the initiative of the Bucaram Government and had then been replaced by other mechanisms as a means of solving the problems related to the Restrepo brothers case and the Benavides case, the only cases of enforced disappearance that had taken place in Ecuador. Responsibility for that type of problem at the national level had subsequently been entrusted to the National Council of the Judiciary. In the case of the Restrepo brothers, the Ecuadorian State had tried to solve the problem with the Restrepo family by providing compensation even before the case had been referred to the Inter-American Commission on Human Rights. Ecuador was apparently the only Latin American country that had decided to compensate victims of human rights violations.

10. Ecuador lacked overall statistics on prisons, but studies had been carried out with the assistance of non-governmental organizations. The noticeable change in the size of the prison population was apparently the result of the amendment of the Drugs Act. Ecuador was neither a producer nor a large consumer of drugs, but other countries in the region were. In a spirit of cooperation, Ecuador had therefore taken criminal law measures to halt the drug traffic and the Ecuadorian courts had handed down more convictions and penalties than usual for the use and possession of drugs. Ecuador was also trying to reduce the prison population.

11. Reference had been made to the difference between the terms "multicultural" and "pluri-ethnic" used in the Constitution. A far-reaching discussion had been held in the Ecuadorian National Assembly on the difference between "pluri-national", "multicultural" and "pluri-ethnic". Some political movements, especially the Pachakutik (New Country) Party, whose members were primarily indigenous peoples belonging to different communities and which had a great influence in Ecuador, would like the new Constitution to declare Ecuador a pluri-national country. The Constituent Assembly had accepted the idea of a "multicultural and pluri-ethnic" country, but had not agreed to the term "multinational" because "pluri-nationality", which implied national independence and autonomy, was not conceivable in a country as small as Ecuador, where the indigenous peoples' land would, ultimately, be the entire territory. Quechua-speaking groups were to be found throughout the Andean region and on the Pacific coast, for example, and it was therefore impossible to set aside particular territorial reserves for Ecuador's indigenous peoples, as was done in other countries.

12. Ecuador's indigenous peoples had enormous political influence, not only because they took part in the process of consultation, but also because they could literally paralyse the country when they considered that their rights had been violated. Strikes organized by indigenous peoples were usually peaceful and had helped bring about the political changes that had taken place in the country in recent years. Although he could not quote precise figures, he stressed that a movement or a demonstration which mobilized more than 2 or 3 million persons in a country with a population of 11 million showed to what extent civil society played not only an important, but also a decisive, role in the direction the country's policy took.

13. His delegation had been asked about the indigenous peoples and their way of dealing with oil drilling activities. Drilling for oil had been going on in the Amazon region since about the 1970s and it had given rise to serious problems in the country from the point of view of respect for the environment and for human rights. Thanks, in particular, to communication and negotiation with the indigenous communities in the region, Ecuador made sure that the provisions of contracts signed with oil and service companies protected the environmental balance. On many occasions, those communities and non-governmental organizations had drawn attention to the oil companies' failure to abide by contractual provisions. The peoples concerned were usually few in number and they were members of nomadic Amazon communities whose culture was being destroyed by the invasion of modern life and the many related service activities that went together with oil drilling. In that connection, he recalled that Ecuador's policy had never been to isolate indigenous peoples and shut them up in reserves; its guiding principle had always been that individual and community freedom must be respected.

14. He also stressed that respect for indigenous culture depended on the educational system, which guaranteed language teaching and multilingualism, as provided for in the Constitution. Recently, political propaganda campaigns had been waged in Quechua. Unfortunately, the recognition of multilingual education was now facing funding constraints.

15. With regard to land ownership, the Constitution of Ecuador provided that the country's natural resources belonged to the State and to society as a whole. The resources of the subsoil were therefore assigned by means of concessions granted by the State. In some cases, indigenous communities were allowed to share in the use of resources covered by concessions.

16. The problem of the immigration of Colombian women to Ecuador was the result of various factors and had consequences which required the country to take measures to curb such immigration. As far as the training of girls was concerned, moreover, he recalled that education was compulsory at the elementary and secondary levels in rural and urban areas for boys and girls alike. The situation was often better in rural areas because, in the last 25 years, the rural exodus had increased sharply and towns had been unable to absorb those new marginal populations and to provide them with services such as electricity, water, etc. An enormous effort had been made to set up programmes, especially for indigenous groups, that were suited to the various population groups in a country which had three very separate regions, the Pacific coast region, the Andean region and the Amazon region, all with different climates and seasons that must be taken into account.

17. As to pre-trial detention, the problem that arose in Ecuador resulted from the interpretation of the provisions of the law, with the limitations it imposed, and from the practices of judges. The authorities had therefore been trying not only to train judges, but also to give the judiciary total independence by granting the National Council of the Judiciary broad autonomy to enable it to solve the problems stemming from slowness of procedures. New mechanisms had to be set up for that purpose and Ecuador had therefore concluded an agreement with the World Bank for several million dollars to finance a project designed to support the Supreme Court of Justice and the judiciary.

18. When a state of emergency was declared, rights such as that of freedom of movement were partially suspended, but not revoked. Ecuador had been through three wars in recent times and had had to cope with serious disasters, but, whenever a state of emergency had been proclaimed, it had been lifted rapidly. Before the Constitution had been amended, the Court of Constitutional Guarantees had been a kind of multi-personal ombudsman to which Ecuadorians could submit complaints of violations of their constitutional rights. With the establishment of the Office of the Ombudsman, the Court of Constitutional Guarantees had changed, but Ecuadorians could still apply to the authorities for compensation when they considered that their human rights had been violated. Reference had also been made to the slowness of judicial proceedings and the backlog of pending cases, but, since the amendment of the Penal Code, Ecuador had made great efforts to eliminate and reduce penalties and allow persons sentenced to light penalties to remain at liberty.

19. The question of indigenous education had been raised, particularly with regard to the largest group, which was Quechua-speaking. It had been asked whether instruction was still given in both languages. In actual fact, Quechua was spoken by many Ecuadorians, not only by persons belonging to that indigenous group. Although there were few statistics in that regard, it could be said that the indigenous peoples played a very active role in Ecuadorian political life, not only at the national level, but also at the international

level, since the Confederation of Indigenous Nationalities of Ecuador (CONAIE) had a representative in the Working Group on Indigenous Peoples of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

20. Mr. GUZMAN (Ecuador), replying to the questions that had been asked about possible conflicts between the Constitution and international treaties and which one prevailed, said that such a case could not arise in connection with human rights, as shown by the principles embodied in the Constitution in force, as well as in the new Constitution which had just been adopted by the Constituent Assembly. According to article 18 of the Constitution in force, the State guaranteed all men and women under its jurisdiction the enjoyment and full and free exercise of the civil, political, economic, social and cultural rights provided for in the declarations, covenants, agreements and other international instruments in force. Consequently, all of the rights and guarantees proclaimed by the International Covenants on Human Rights, as well as by the declarations on those rights, were incorporated not only in general law, but also in the Constitution of Ecuador.

21. The implementation of that principle was provided for in article 21 of the Constitution, according to which the rights and guarantees embodied in the Constitution (i.e. those included in the International Covenants) were fully applicable and could be invoked in any court or before any judge or government authority. Moreover, article 19 of the Constitution provided that the highest duty of the State was to respect and guarantee respect for the human rights guaranteed by the Constitution, including all of the rights provided for in the International Covenants. Article 16 of the new Constitution adopted a few weeks previously further strengthened that statement, while article 17 reaffirmed that the State guaranteed all inhabitants, without discrimination, the exercise and full and free enjoyment of the rights provided for in the Constitution and in declarations, covenants, agreements and other international instruments. The State had an obligation to adopt programmes to give effect to the exercise of the rights in question. The Constitution also provided that the interpretation that was most favourable to full respect for constitutional rights and guarantees would prevail. No authority could place any prior conditions on the exercise of those rights that had not been established in the Constitution or the law. The laws could not restrict the exercise of constitutional rights and guarantees. As could be seen, the Constitution of Ecuador guaranteed very broad protection of the human rights provided for in the Covenants.

22. Such protection of human rights was reflected in Ecuadorian legislation, particularly in the form of the right of amparo. According to article 31 of the Constitution, any person without exception could apply to the organs of the judiciary (which was independent and autonomous) designated by law to request the adoption of urgent measures in order to halt, prevent the commission or immediately remedy the consequences of an unlawful act by a public authority which violated any of the constitutional rights and might cause imminent, serious and irreparable harm. The courts had an obligation to rule on such an application and could thus not refuse to do so, even on official holidays. The action in question was immediate. The Constitution specifically defined such action: the judge immediately summoned the parties, who were heard in public within 24 hours and, if he found that the application to be well founded, he ordered the suspension of any current or imminent

action which might result in a violation of constitutional rights. Within the following 48 hours, the judge handed down his decision, to which immediate effect must be given. The suspension order handed down by the judge could be appealed to the Constitutional Court. There was also a more detailed set of regulations on the implementation of the right of amparo, which was a very important remedy, in the Act on the Constitutional Court.

23. One of the special forms of protection of human rights was the remedy of habeas corpus. The Constitution thus clearly stated that any person who considered that he had been unlawfully deprived of his liberty could apply for a remedy of habeas corpus. He exercised that right before the mayor, who was, according to a tradition dating back to Spanish law, regarded as the closest representative of the community and the will of the citizens. The mayor then immediately ordered that the person concerned should be brought before him and that the detention order should be submitted to him. Having taken cognizance of the facts, the mayor ordered the prisoner's immediate release if he had not been brought forward, if the order had not been shown to him or had not been drawn up according to the required legal procedures or if the remedy was justified as to the merits. Any official who did not comply with that decision was immediately removed from his post. After having released the prisoner, however, an official who had been dismissed could challenge the decision in the competent courts. The remedy of habeas corpus was widely used and was an effective means of securing the release of persons who had been unfairly detained. There was also the remedy of habeas data, which recognized the right of any person to have access to information about himself held by the authorities or by private individuals and to know what use was being made of such data. Similarly, any person could request the competent official or judge to update, rectify, eliminate or cancel information which was incorrect or unlawfully affected his rights. The only restriction which was provided for and which was strictly regulated by the Constitutional Court related to information that had to be kept secret for reasons of national security.

24. The information that indigenous groups lived in the most miserable economic and social conditions was an abusive generalization. Having served for several years as Executive Director of the national body responsible for the development of indigenous social groups, he had had the opportunity to see that, in many regions, the wealthiest groups were indigenous, while the poorest were white and mixed-race peasants. In reply to information on the professional marginalization of women, he said that most of the traders on the Quito Stock Exchange, and those who were the most efficient, were women.

25. The CHAIRPERSON invited the delegation of Ecuador to refer rapidly, in view of the lack of time, to part II of the list of issues (CCPR/C/63/Q/ECU/1).

26. Mr. GALLEGOS CHIRIBOGA (Ecuador) said that most of the information requested had been provided in the replies to the questions asked in part I of the list of issues. He would simply add that, following the reform which had started in 1997, Supreme Court judges were now appointed for life and the country had a National Council of the Judiciary, an autonomous body in charge of the administration of the system of justice. The aim of the Ecuadorian State was thus to promote the impartiality, effectiveness and transparency of the judicial power. With regard to paragraph 14 of the list of issues, he

explained that military courts, which were subject to very specific rules and codes, had been established to try crimes committed by members of the military and the police in the exercise of their functions. However, members of the military and the police who had committed ordinary crimes were tried by ordinary courts. There had been various problems with the functioning of the military courts, but measures had been taken to solve them.

27. With regard to paragraph 15 of the list of issues, he referred the members of the Committee to the addendum to the report distributed in the meeting room and, in particular, to pages 27, 28, 32 and 33 on the right to a fair trial and to page 30 on crimes committed by minors. In any event, Ecuadorian social law was designed primarily to establish machinery to guarantee the right to a fair trial. As to paragraph 16 on national human rights institutions, Ecuador had decided about two years previously to establish the Ombudsman's Office, on the basis of a recent tradition in Latin America and the Scandinavian experience. That measure was a definite step forward, particularly as the State had given guarantees that the Ombudsman's Office would operate effectively.

28. With regard to paragraphs 17 and 18 of the list of issues on freedom of expression and the right to privacy, he referred the Committee to pages 36 and 37 of the addendum and pointed out that freedom of expression was one of the characteristics of Ecuadorian democracy and that many newspapers were distributed free of charge throughout the country. During the elections which had taken place on 12 July, moreover, information from press agencies had been widely used to make forecasts of trends, thereby demonstrating the importance, credibility and prestige of the Ecuadorian press. The right to privacy was fully observed.

29. The state of emergency referred to in paragraph 19 of the list of issues related to the 1995 conflict between Ecuador and Peru. Its proclamation had, of course, initially been notified only to the Inter-American Commission on Human Rights, but, subsequently, all United Nations bodies, including the Committee, and all regional organizations had been informed of developments in the situation and the settlement of the dispute. With regard to paragraph 20 on the dissemination of information on the rights provided for in the Covenant, the Minister for Foreign Affairs, who was the former United Nations High Commissioner for Human Rights, had launched a national plan, together with specific measures to strengthen the implementation of human rights in the country. Considerable progress had been made in that area, particularly with regard to the integration of human rights teaching in the training of members of the military and the police. Similar measures were to be taken as part of the training of judges and lawyers. The press and the television were involved in programmes to promote human rights, especially as part of the fiftieth anniversary of the Universal Declaration of Human Rights. Those actions were being taken not only by the executive, but also by the legislature, as demonstrated by the seminar which had been organized by the Human Rights Commission of the National Congress and which had been attended by experts from 180 non-governmental organizations.

30. The CHAIRPERSON invited the members of the Committee to ask additional questions and request further explanations.

31. Mrs. MEDINA QUIROGA said that the establishment of the National Council of the Judiciary, the depoliticization of the system of justice and the compensation of victims of violations of human rights were definite steps forward and novelties in Latin America. However, the National Plan for Human Rights, referred to on pages 32 and 35 of the addendum to the report, might not have enough weight under the law to be fully applicable. Was the decriminalization of homosexuality an ad hoc or a final measure? Did private mediation or arbitral courts already exist or were they going to be set up during the four-year period referred to on page 32 of the addendum to the report?

32. She had been surprised to read on page 33 of the addendum to the report that that basic principle of the presumption of innocence was recognized by the majority of judges. What did that mean? Referring to free legal assistance, the report of the Inter-American Commission on Human Rights indicated that there were four defence counsel in Quito and four in Guayaquil, but that was obviously not enough to meet the needs of defendants who had no financial resources. Had measures been taken to remedy that situation, particularly in view of the enormous backlog in the handling of cases? She welcomed the Ecuadorian Government's willingness to take account of the Committee's comments on the José Luis Garcia Fuenzalida and Jorge Villacrès Ortega cases.

33. Mr. YALDEN noted that paragraph 32 of the fourth report stated that the Congress had established the Ad Hoc Commission on Human Rights to analyse and verify complaints of human rights violations, determine responsibility in such cases and, in general, promote the defence of the fundamental rights of Ecuadorian citizens. He wished to know whether that Commission still existed and, if so, what its powers were and what results it had achieved. He also asked whether the Commission for Truth and Justice, which apparently no longer existed, had been or would be replaced by another body of the same kind.

34. He wished to have some information on the announced appointment of a new human rights ombudsman, following the resignation of the preceding ombudsman, and about the arrangements being made for such an appointment. Lastly, he asked what bodies Ecuadorian citizens could apply to if they considered that their fundamental rights had been violated.

35. Mr. BHAGWATI said that he associated himself with the concerns Mrs. Medina Quiroga had expressed about legal aid and asked whether such assistance was available in Ecuador and, if so, whether it was granted both in criminal and in civil cases. If it did not exist, were there plans to set up a system to help defendants who had no financial resources?

36. Like Mr. Yalden, he would also like to have details on the powers and role of the Ad Hoc Commission on Human Rights and to know, for example, whether private individuals could apply directly to it if they considered that their fundamental rights had been violated.

37. With regard to the National Council of the Judiciary, he asked whether the new bill on the appointment of judges had been adopted and, if so, what

provisions of that Act were applicable. Were there provisions designed to protect judges from attacks and violence to which they might be subject because of decisions they had taken during court proceedings?

38. Mr. GALLEGOS CHIRIBOGA (Ecuador) said that the National Plan for Human Rights, which had been officially adopted in November 1997, had been drafted by the Government in cooperation with the Inter-Agency Committee and civil society as a whole. It had compulsory legal value and great progress had already been made in its implementation.

39. The Constitutional Court was open to any person or persons who, individually or collectively, challenged the validity of a national law adopted by Congress. If the Court found a law to be unconstitutional, the law could be repealed. That was a remedy available to citizens which went much further than the traditional remedy of amparo. However, it should be stressed that the Constitution of Ecuador provided that any Ecuadorian citizen could apply to any authority to assert his rights and that he did not necessarily have to apply to the Constitutional Court, the Supreme Court or the Ombudsman for that purpose.

40. The function of characterizing offences was carried out by the district judge, whose decision was upheld by the competent judicial organ. In that connection, the principle of the presumption of innocence was the basis of all judicial proceedings.

41. In reply to Mr. Yalden's questions, he said that, as necessary, the Congress could set up standing or ad hoc commissions to deal with particular matters. It had thus set up the Ad Hoc Commission on Human Rights not only to monitor respect for individual rights, but also to propose constitutional amendments in areas relating to human rights. Moreover, in-depth investigations were being conducted in connection with all of the cases of disappearances and atrocities that had been committed. Judges and magistrates did not benefit from any special measures of protection in the exercise of their functions, but there had been few cases in which they had been subjected to violence because of their profession.

42. Mr. GUZMAN (Ecuador), replying to the questions on the possibility of indigenous groups' representation in Congress, said that those groups varied considerably in terms of size: they could have 150, 700 or 5,000 members scattered among many districts in each province. The representatives of those groups should therefore be elected at the district level, but that would require a radical change in the electoral system that would be difficult to make at the present time.

43. Mr. BHAGWATI asked how judges of the Supreme Court were appointed: were they elected by the Congress or by the National Council of the Judiciary?

44. Mr. GUZMAN (Ecuador) said that judges of the Supreme Court of Justice were appointed by the judiciary and that the National Council of the Judiciary exercised exclusively administrative functions.

45. The CHAIRPERSON thanked the delegation for submitting the fourth periodic report of Ecuador. The human rights situation in the country was

developing favourably and that was to be welcomed. There were, however, still some concerns. For example, although women were equal to men under the law, equality did not seem to be reflected in real life, primarily in education, which was essential. Moreover, even though that question did not come directly within the Committee's jurisdiction under the Covenant, she was concerned about the way in which abortion was regarded in the Ecuadorian social context. She also noted that 70 per cent of prisoners were awaiting trial, and that was obviously contrary to the provisions of article 9 of the Covenant, since pre-trial detention should be a guarantee that the prisoner would be brought before the courts, not a penalty in itself. Apparently, the Government of Ecuador was basically trying to integrate and assimilate the many linguistic and ethnic minorities and indigenous peoples rather than allowing them to take their place in society in accordance with article 27 of the Covenant.

46. Mr. GALLEGOS CHIRIBOGA (Ecuador) thanked the members of the Committee for their comments and understanding of Educador's human rights problems as well as for their contribution to efforts to find appropriate solutions. He assured the Committee that Ecuador would continue in future to make progress in strengthening democracy.

47. The CHAIRPERSON said that the Committee had completed its consideration of the fourth periodic report of Ecuador.

48. The delegation of Ecuador withdrew.

The discussion covered in the summary record ended at 4.55 p.m.